



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 9, 2011

CBCA 2334-RELO

In the Matter of MICHAEL A. FAIN

Michael A. Fain, Cave Creek, AZ, Claimant.

Jeffrey C. Good, Assistant General Counsel, General Law Unit, Office of the General Counsel, Federal Bureau of Investigation, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

Michael A. Fain asks the Board to direct the Federal Bureau of Investigation (FBI) to reimburse him for the expenses he incurred in purchasing a home subsequent to his transfer by the agency from one duty station to another.

In October 2004, the FBI transferred Mr. Fain from Quantico, Virginia, to Camp Pendleton, California. In January 2005, Mr. Fain purchased a home in the Phoenix, Arizona, area, approximately 375 miles from Camp Pendleton. He then spent weekends in that house while he was stationed at Camp Pendleton. During the week, he lived in a rented room near his office.

The FBI refused to reimburse Mr. Fain for the costs of the home purchase. The employee believes that the agency's original reason for denying reimbursement was that the house was not within fifty miles of the San Diego, California, FBI field office. The agency now says that the reason is that the employee did not regularly commute from the Phoenix area to his duty station at Camp Pendleton. In this regard, the agency believes that the decision of the General Services Board of Contract Appeals in *Richard H. Mogford*, GSBCA 15958-RELO, 03-2 BCA ¶ 32,348, is controlling. In *Mogford*, the board denied a claim for

real estate transaction expenses because the home which the employee purchased was not the one from which he regularly commuted to and from work.

Mr. Fain believes that the facts of his case are “quite different” from those of *Mogford*, and that any contention to the contrary is “ridiculous.” He notes that his transfer was unusual in that he was supervised by Marine Corps officers while at Camp Pendleton; the Marines had no objection to his living arrangements; the FBI office responsible for maintaining his records was located in Stafford, Virginia (near Quantico); the cost-of-living component of his pay was calculated as if he were assigned to Stafford, but the actual cost of living was much higher in Southern California; and the cost of living was similar in Phoenix to what it was in Stafford. Mr. Fain contends that “he should be compensated for the home purchase expenses he incurred when buying a home in an area that had a cost of living allowance commensurate with which [sic] he was paid.”

Unfortunately for Mr. Fain, none of the differences he alleges between his situation and Mr. Mogford’s has any bearing on this case. *Mogford* was one of many decisions in which we and our predecessors in resolving federal employee relocation claims have interpreted the Federal Travel Regulation to create a bright-line rule: The expenses a transferred employee incurs in purchasing a residence may be reimbursed only if the home is “at your new official station,” 41 CFR 302-11.1(a) (2004), and a home is at a new station “only if it is the one from which the employee regularly commutes to and from work on a daily basis.” *John Nobles*, CBCA 1131-RELO, 08-2 BCA ¶ 33,872 (collecting cases); *see also Robert L. McCall*, CBCA 1247-RELO, 08-2 BCA ¶ 33,998; *cf. Connie J. Holliday*, CBCA 1866-RELO, 10-1 BCA ¶ 34,439 (same rule for sale of residence at old duty station). Because the residence for which Mr. Fain seeks reimbursement of transaction expenses was not the residence from which he regularly commuted to and from work while stationed at Camp Pendleton, the FBI properly refused to reimburse him for those expenses.

STEPHEN M. DANIELS
Board Judge